

**REMARKS**

Reconsideration of all grounds of rejection and allowance of all the claims are respectfully requested in light of the above amendments and the following remarks. Claims 1-10, 12 and 14-17 remain pending herein. Claim 19 has been added, and support is found in the specification at various locations regarding the use of RFID tags.

Applicants confirm that this Office Action dated 4/22/03 supercedes the Office Action dated 3/5/03.

**Summary of the Rejections:**

- (1) Claims 1, 12, 14 and 15 stand rejected under 35 U.S.C. §102(e) in view of Loof (U.S. 6,507,279).
- (2) Claims 2-10, 16 and 17 stand rejected under 35 U.S.C. §103(a) over Tracy et al. (U.S. 5,979,757 hereinafter "Tracy") in view of Loof.

**Applicants' Traversal:**

(1) It is respectfully submitted that none of the instant claims are anticipated by Loof. Applicants have amended the base claims to clarify that in the presently claimed invention said controller permits the user to request pricing information from a plurality of vendors and stores that offer a particular product for sale identified by the information read from the label, said pricing information from a variety of vendors being retrieved by said service nodes. Support is found in the specification at least at page 3, lines 15-19, and page 4, first paragraph. Thus the user is able to receive competitive pricing information from a plurality of vendors and sellers via the service node. Applicants note that the plurality of vendors may comprise Internet vendors, other

“brick and mortar” vendors, and/or the Internet vending division of a brick and mortar vendor, such as Macy’s online.

For example, according to the present invention, a shopper can go into Sears, scan a label identifying the product, and receive information on pricing for the same product being sold by Online store.com, J.C. Penny online catalog, Wal-Mart, Home Depot, etc. Applicants note that prices would be compiled on a storage device that is searched by the service node, or the service node can poll the retailers directly after the request is made. The presently claimed invention is distinguishable from Loof, as Loof is directed to a self-checkout system using RFID tags and EAS, and Loof fails to disclose, suggest, or motivate the artisan to provide competitive pricing information from a plurality of vendors. Applicants note that the presently claimed invention may not be favored by vendors, except for the low price sellers, because it provides a user with critical data (competitive pricing) that may very well dissuade the user from buying the product in the store which he scanned the label, and ordering the product from a lower cost seller.

In order to anticipate a claim, the reference must disclose each and every element recited by the claim. As Loof is completely silent regarding requesting/receiving competitive product information being received by the service node from a plurality of vendors, it is respectfully submitted that the present invention is not anticipated by same.

Reconsideration and withdrawal of all grounds of rejection are respectfully requested.

(2) With regard to the rejections under 35 U.S.C. §103(a) in view of the combination of Tracy and Loof, Applicants respectfully disagree to that statement in the Office Action that column 9 of Tracy discloses or suggests the recitation that said

controller permits the user to request pricing information from a plurality of vendors and stores that offer a particular product for sale identified by the information read from the label, said pricing information from a variety of vendors being retrieved by said service nodes.

As Applicants have previously pointed out, Tracy is an automated system for a specific retailer, and it does not provide competitive pricing information *from a plurality of vendors* selling the same product or similar products. What Tracy discloses is competitive pricing information *for a single vendor selling the product.*

For example, according to Tracy when one is grocery shopping at Safeway and scans a container of yogurt, the user will receive information about the particular brand of Yogurt, perhaps other brands of Yogurt that may have less fat, etc. However, Tracy, and/or the combination of Loof and Tracy, *does not disclose or suggest* that the system notifies the buyer that he/she can get the same brand of yogurt at cheaper price by going to Giant or Food Lion, or ordering from D'agostinos.com.

When one looks at the teachings of the combination of Tracy and Loof, the device (please see Fig. 7A) of Tracy appears to exemplify their invention as comprising a remote terminal unit that is physically attached to a shopping cart in a retail store. As Fig. 7A identifies the store as "Lennie's", Applicants respectfully submit there is no possible way that an artisan could glean from the combination of teachings of Tracy and Loof that the unit connected to the shopping cart at Lennies would provide competitive pricing information to the consumer from other vendors of the same product (or similar products) to cause them to go down the street to another store, or order the product over

the internet. Such an interpretation would be contrary to teachings of the references, as they clearly do not provide a consumer with alternatives sold by other vendors.

Furthermore, The Court of Appeals for the Federal Circuit has held that:

The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.

*In re Fritch*, 973, F.2d 1260, 1266, 23 U.S.P.Q. 2d 1780, 1783-84 (Fed. Cir. 1992). Here, the Final Office Action has not set forth a *prima facie* case of obviousness as the suggested desirability is of providing competitive pricing information from a plurality of vendors, as recited by Applicant's instant claims, is lacking in the combination of references. Reconsideration and withdrawal of this ground of rejection are respectfully requested.

Finally, Applicants wish to clarify in the amendment of claim 1 back to "label" from "RFID", it is noted that any type of scannable label could be used, such as UPC, SKU numbers, etc. While RFID is contemplated in a best mode, the apparatus and method clearly are not limited to the scanning of RFID tags to obtain competitive pricing information from a plurality of vendors.

For all the foregoing reasons, it is respectfully submitted that all grounds of rejection in the Office Action have been overcome. A Notice of Allowance is respectfully requested.

Respectfully submitted,

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